IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 4TH OCTOBER 2007 / 12TH ASWINA 1929

WP(C).No. 29354 of 2007(T)

AGAINST THE ORDER IN IA 1361/2004 IN
AS.55/2004 of SUB COURT, CHERTHALA

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PETITIONER:

C.D.VALSALA,
CHIRAYIL, PADINJATTUMKARA VADAKKUM MURI,
KUTHIATHODE VILLAGE, CHERTHALA.

BY ADV. SRI.G.P.SHINOD
SRI.RAM MOHAN.G.
SRI.MANU V.

RESPONDENT:

ABDULKALAM,
THEKKEVELIYIL, PATTANAKKAD MURI,
PATTANAKKADU, CHERTHALA.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.29354 of 2007

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Dated this the 4th day of October, 2007.

JUDGMENT

Decree holder in O.S.No.187 of 2001 of the Munsiff's Court, Cherthala, who is the respondent in A.S.No.55 of 2004, aggrieved by the decision of the Subordinate Judge, Cherthala granting stay till the disposal of the appeal, had preferred this Writ Petition. The suit was one for realisation of money. The Appellate Court granted a stay in spite of oral submission made by the writ petitioner opposing the same. Irrespective of the fact of opposition or not when an appeal is preferred against a money decree Order 41 Rule 5 of C.P.C. contemplates a situation where security has to be furnished for getting a stay. It is also submitted by the counsel for the writ petitioner that there was some property under attachment, which later was found to be sold much prior to the date of attachment and so, the adequacy of attachment was also not available in this case.

2. Therefore, I set aside the order passed by the Subordinate Judge, Cherthala and direct the said court to reconsider the matter afresh after hearing both sides and dispose it of in accordance with law. Needless to say that since the matter is disposed of at the admission stage, the other side also be heard before a final order is passed.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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